IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26.10.2007

CORAM

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

CRIMINAL REVISION CASE No.1640 of 2007
and
M.P.No.1 of 2007

1. P. Durai
2. N. Gomathi Nayagam
3. S. Venkatachalam
4. K. Vadivel Murugan
5. Muthusamy ... Petitioners/ Accused 1 to 5.

-vs-

State by
Inspector of Police,
Cholavaram Police Station,
Thiruvallur District ... Respondents/ Complainant.

Revision against the framing of charges in C.C.No. 63 of 2006, dated 12.07.2007, on the file of the learned Judicial Magistrate No.II, Ponneri.

For petitioners : M/s. K. Sukumaran
For Respondent : Mr. Hasan Mohamed Jinnah
Government Advocate (Crl.Side)

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J U D G M E N T

The above revision is directed against the framing of charges in C.C.No. 63 of 2006, dated 12.07.2007, on the file of the learned Judicial Magistrate No.II, Ponneri.

2. The main point that is urged in the above Criminal Revision case is that before framing the charges against the accused/ petitioners

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herein, they were not given an opportunity of hearing at all. The entries in the 'A' Diary which is available at page 7 of the typed set read as follows:

> " 12.07.2007:
>
> A1 to A5 present. Charge framed. Question denied. Posted for trial W/s to LW.1 to 4 call on 24.07.2007. "

The learned counsel for the petitioners submits that the above entry makes it very clear that before framing the charges no opportunity of hearing was given to the accused/petitioners and therefore, the charges are liable to be quashed and a direction may be given to the Trial Court to frame charges afresh after hearing the accused / petitioners.

3. In support of his above contention viz. the accused should be heard before framing of the charges, the learned counsel for the petitioners placed reliance on

> (1) an unreported decision of Mr.Justice R.Balasubramanian, rendered in Crl.R.C.No.1306 of 2000 and Crl.O.P.No.16577 of 2000 (" Srivatsa Investment rep.by Thiagarajan and another ..vs.. State by Inspector of Police, Chennai "
>
> (2) 2005 (1) SCC 568 (State of Orissa ..vs.. Debendra Nath Padhi)
>
> 3) 2000 (2) SCC 57 (State of Madhya Pradesh .. vs.. S.B.Johari and others); and
>
> 4) 1994 (4) SCC 142 (Minakshi Bala ..vs.. Sudhir Kumar and others)

4. Countering the said submissions, Mr. Hasan Mohamed Jinnah, Government Advocate (Criminal side) submits that a reading of the section 239 of Cr.P.C makes it very clear that the accused need to be heard only if the learned Magistrate is of the opinion that the facts and circumstances of the case warrant such a hearing of the accused and it is not mandatory on the part of the learned Magistrate to hear the accused before framing the charges.

5. I have carefully considered the above said submissions made on either side.

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6. In the decision reported in 2005 (1) SCC 568, referred to supra, in paragraph 7, the Apex Court has observed as follows:

> "7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate to consider "the police report and the documents sent

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with it under Section 173" and, if necessary, examine the accused and after giving the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof." (underlining supplied)

In paragraph 16 it is observed as follows:

" 16. .....This aspect, however, has been adverted to in State Anti-Corruption Bureau v. P. Suryaprakasam where considering the scope of Sections 239 and 240 of the Code, it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. "

In the decision reported in 1994 (4) SCC 142, in paragraph 6, it is observed as follows:

" 6. Having regard to the fact that the offences, for which charge sheet was submitted in the instant case and congnizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 Cr.P.C and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 Cr.P.C ; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 Cr.P.C."

Unreported decision of Mr. Justice. R.Balasubramanian referred to supra, it is observed as follows:

" The only point urged before this Court in challenging the framing of charge against the revision petitioner is that, he was not heard before framing of the said charge. Reading sections 239 and 240 of the Code of Criminal Procedure together would make it very clear that an opportunity should be given to the accused as well as to the prosecution at the time of framing charge. The certified copy of the proceedings

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in C.C.No.8 of 2000 is produced before me, which shows that copies were furnished to the accused on 09.08.2000; on 17.08.2000 the charge was framed and only after framing the charge, the accused was heard. This is in violation of the above referred to two sections. Accordingly, the framing of charge in C.C.No.8 of 2000 on the file of the Special Court, TNPID Act, Chennai is set aside. "

A perusal of the decision reported in 1994 (4) SCC 142, referred to supra shows that the learned Magistrate is required to consider the police report and the document sent with it under section 173 Cr.P.C and examine the accused, if he thinks necessary, and give an opportunity of hearing to the prosecution and the accused. Thus, it is clear that at the stage of the framing of charges, discretion is given to the learned Magistrate as to whether the accused should be examined or not. But no such discretion has been given to the learned Magistrate in the matter of giving an opportunity of hearing to the prosecution and the accused. Similarly, a perusal of the decision reported in 2005 (1) SCC 568 makes it abundantly clear at the stage of the framing of charges, the right of the accused to be heard has been recognized beyond the pale of any doubt.

7. Further the decision of Mr. Justice. R.Balasubramanian squarely applies to the facts of this case. The facts of that case and the case on hand are similar. Therefore, in the considered view of this Court, the above Criminal Revision Case has to be allowed. The framing of charges in C.C.No. 63 of 2006 on the file of the learned Judicial Magistrate No.II, Ponneri are set aside, the Criminal Revision Case is allowed and the matter stands remitted back to the learned Magistrate to comply with the following directions:

" To provide an opportunity to the prosecution and the accused; hear them and then frame the charges if there is a ground".

8. Accordingly, the above Criminal Revision is allowed with the above directions. Consequently, connected Miscellaneous petition is also closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The Inspector of Police,
Cholavaram Police Station,
Thiruvallur District

2. The Judicial Magistrate No.II,
Ponneri.

3. The Public Prosecutor, High Court, Madras.

+ 1 CC To Public Prosecutor, Advocate SR NO.65247

+ 1 CC To Mr.K.Sukumaran, Advocate SR NO.64502

Crl.R.C.No.1640 of 2007

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